



STATE BOARD OF EQUALIZATION

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April 7, 2006

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Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the April 18, 2006 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulation 1602, *Food Products*.

Action 1, on the Agenda concerns revising Regulation 1602 to clarify sales of combination packages as well as the deletion of obsolete language that excluded from the definition of food products snack foods, candy, gum and bottled water.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Board Meetings and Committee Information" page on the Board's Internet web site <http://www.boe.ca.gov/meetings/btcommittee.htm> for copies of Committee discussion or issue papers, minutes, a procedures manual and calendars arranged according to subject matter and by month.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **9:30 a.m. on April 18, 2006**, in Room 121 at the address shown above.

Sincerely,

Randie L. Henry, Deputy Director  
Sales and Use Tax Department

RLH: caw  
Enclosures



cc: (all with enclosures)

Honorable John Chiang, Chair  
Honorable Claude Parrish, Vice Chairman  
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Honorable Bill Leonard, Member, Second District (MIC 78)  
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Mr. Neil Shah, Board Member's Office, Third District (via e-mail)  
Mr. Romeo Vinzon, Member's Office, Third District (via e-mail)  
Ms. Sylvia Tang, Board Member's Office, First District (via e-mail)  
Mr. Steve Kamp, Board Member's Office, First District (MIC 71)  
Ms. Margaret Pennington, Board Member's Office, Second District (via e-mail)  
Mr. Lee Williams, Board Member's Office, Second District (MIC 78 and via e-mail)  
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Ms. Kristine Cazadd (MIC 83)  
Mr. Robert Lambert (MIC 82)  
Mr. Randy Ferris (MIC 82)  
Ms. Trecia Nienow (MIC 82)  
Ms. Janice Thurston (via e-mail)  
Ms. Jean Ogrod (via e-mail)  
Mr. Jeff Vest (via e-mail)  
Mr. David Levine (MIC 85)  
Mr. Steve Ryan (MIC 85)  
Mr. Rey Obligacion (via e-mail)  
Mr. Todd Gilman (MIC 70)  
Mr. Kenneth Topper (via e-mail)  
Mr. Dave Hayes (MIC 67)  
Ms. Freda Orendt (via e-mail)  
Mr. Stephen Rudd (via e-mail)  
Mr. Joseph Young (via e-mail)  
Mr. Jeffrey L. McGuire (MIC 92 and via e-mail)  
Mr. Vic Anderson (MIC 44 and via e-mail)  
Mr. Larry Bergkamp (via e-mail)  
Mr. Geoffrey E. Lyle (MIC 50)  
Ms. Leila Khabbaz (MIC 50)  
Ms. Cecilia Watkins (MIC 50)  
Ms. Lynn Whitaker (MIC 50)

## Formal Issue Paper Number 05-015

**Agenda**  
**Page 1 of 2**

**AGENDA — April 18, 2006 Business Taxes Committee Meeting**  
**Proposed Revisions to Regulation 1602, Food Products, Regarding the Application of Tax to Sales of**  
**Combination Packages of Food and Nonfood Products**

Action Item	Staff and Industry's Proposed Regulatory Language
<p><b>Action 1 — Sales of Combination Packages and Deletion of Obsolete Language</b></p>	<p><b>Regulation 1602. FOOD PRODUCTS</b></p> <p>(b) SALES OF COMBINATION PACKAGES. When a package contains both food products (e.g., dried fruit) and nonfood products (e.g., wine or toys), the application of tax depends upon the essential character of the complete package. If more than 10 percent of the retail value of the complete package, exclusive of the container, represents the value of the nonfood <del>merchandise</del>products, a segregation must be made <del>and</del><u>if the retailer has documentation that would establish the cost of the individual component parts of the package, with the tax measured by the retail selling price of such nonfood <del>merchandise</del>products.</u></p> <p><u>When the retailer does not have documentation that would establish the cost of the individual component parts of the package, and the package, exclusive of the container, consists of nonfood products whose retail selling price would exceed 10 percent of the retail selling price for the entire package, the tax may be measured by the retail selling price of the entire package.</u></p> <p><u>If the retail value of the nonfood products is 10 percent or less, exclusive of the container, and the retail value of the container is 50 percent or less of the retail value of the entire package, the selling price of the entire package is not subject to tax.</u></p> <p>(a)(1), (a)(2), (a)(3), and (a)(4),          Obsolete language is being deleted as illustrated in Exhibit 2.</p>

Issue Paper Number **05 - 015**



BOARD OF EQUALIZATION  
**KEY AGENCY ISSUE**

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

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## **Proposed Revisions to Regulation 1602, Food Products, Regarding the Application of Tax to Sales of Combination Packages of Food and Nonfood Products**

### **I. Issue**

Should Regulation 1602, *Food Products*, be amended to clarify the application of tax to sales of combination packages of food and nonfood products?

### **II. Alternative 1 - Staff Recommendation**

As agreed upon by staff, the California Retailers Association (CRA), the California Grocers Association (CGA), and the National Association of Theatre Owners of California/Nevada (NATO), staff proposes amending Regulation 1602, subdivision (b), *Sales of Combination Packages*, as follows:

- If the retailer has documentation to establish the cost of the individual component parts of the combination package and the retail value of the nonfood products exceeds 10 percent of the selling price of the entire package, exclusive of the container, the retailer must continue to segregate the selling price of the food and nonfood products. The measure of tax consists of the retail selling price of the nonfood products.
- If the retailer does not have documentation to establish the cost of the individual component parts of the combination package and the retail value of the nonfood products exceeds 10 percent of the selling price of the entire package, exclusive of the container, the tax may be measured by the retail selling price of the entire package.
- If the retail value of the nonfood products is 10 percent or less, exclusive of the container, and the retail value of the container is 50 percent or less of the retail value of the entire package, the selling price of the entire package is not subject to tax.

In addition, staff proposes deleting obsolete language in subdivisions (a)(1), (a)(2), (a)(3), and (a)(4) of Regulation 1602.

A copy of staff's proposed amendments is attached as Exhibit 2. See Formal Issue Paper pages 3-5, and Agenda Action Item 1.

### **III. Other Alternative Considered**

Alternative 2: Do not adopt amendments to Regulation 1602.

Issue Paper Number: **U05 - 015U**

## **IV. Background**

On June 23, 2005, Target Corporation sent a letter to the CRA requesting that a bright-line test be used for taxing sales of combination packages that include food and nonfood products (such as gift baskets) sold for a single price. The letter was forwarded to the Board of Equalization (Board) Business Taxes Committee for consideration. A similar letter was received from Longs Drugs on November 14, 2005.

The provision of current subdivision (b) of Regulation 1602 regarding combination packages has been in existence for over fifty years. During this time, the retail industry has changed substantially. As Target Corporation and Longs Drugs, as well as CRA and CGA explained, when this regulation was written, retailers made their own combination packages, which allowed them to itemize the individual components, determine the single price of each item, and collect the proper amount of tax. Sales were manually rung up at checkout and separate itemization was possible. Today, combination packages containing food and nonfood products (such as gift baskets) are mostly manufactured by a distributor or manufacturer. The retailer pays a single price for the combination package and markets it for a single price. Retailers do not know the cost of each individual item and thus are unable to readily value the components for combination packages. Most retailers use point of sale (POS) checkout scanning equipment and most products have barcodes. The systems used by retailers do not allow for separate itemization of a single barcode item.

As a result, some retailers are reporting their sales tax liability on an arbitrary amount and choosing to absorb the tax burden by not collecting sales tax reimbursement from their customers. Others are reporting and paying tax on the full selling price of the combination packages and collecting the tax reimbursement from their customers on the full amount paid. This is causing them to be sued by consumers claiming the retailers knowingly collected excess tax reimbursement (on sales that are nontaxable under Regulation 1602), even though the retailer remitted the entire amount collected to the Board.

The application of tax to sales of combination packages of food and nonfood products is currently provided in: Regulation 1602, subdivision (b), *Sales of Combination Packages*; Publication 31, *Tax Tips for Grocery Stores*; Publication 106, *Gift-Wrapping Charges*; Audit Manual Section 0904.20; and in various Annotations.<sup>1</sup>

Regulation 1602, subdivision (b), currently provides that when a package contains both food products (e.g., dried fruit) and nonfood products (e.g., wine or toys), the application of tax depends upon the essential character of the complete package. If more than 10 percent of the retail value of the complete package, exclusive of the container, represents the value of the nonfood products, a segregation must be made and the tax measured by the retail selling price of such nonfood products.

The audit manual and publications further explain that sales of combination packages that include food products and nonfood products are considered exempt sales of food if:

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<sup>1</sup> Annotations published in the Business Taxes Law Guide are summaries of the conclusions reached in selected legal rulings of counsel. "Legal ruling of counsel" means a legal opinion written and signed by the Chief Counsel or an attorney who is the Chief Counsel's designee, addressing a specific tax application inquiry from a taxpayer or taxpayer representative, a local government, or Board staff.

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1. The retail value of the food contents is at least 90 percent of the retail value of the total package contents, and
2. The retail value of the package container is 50 percent or less of the retail value of the entire package.

Sales of combination packages that do not meet both of the conditions above are subject to tax based on the selling price of the entire package less the value of the food. In addition, to claim an exemption for the sale of food products in the combination package, retailers' records must separately state the value of the food and nonfood products, and those values should be separately stated on the invoice or receipt.

## **V. Alternative 1 - Staff Recommendation**

### **A. Description of the Staff Recommendation**

Staff recommends amending Regulation 1602, subdivision (b), *Sales of Combination Packages*, as follows. For identification, proposed new text is underlined and deleted text is crossed out:

**(b) SALES OF COMBINATION PACKAGES.** When a package contains both food products (e.g., dried fruit) and nonfood products (e.g., wine or toys), the application of tax depends upon the essential character of the complete package. If more than 10 percent of the retail value of the complete package, exclusive of the container, represents the value of the nonfood ~~merchandise~~products, a segregation must be made ~~and if the retailer has documentation that would establish the cost of the individual component parts of the package, with~~ the tax measured by the retail selling price of such nonfood ~~merchandise~~products.

When the retailer does not have documentation that would establish the cost of the individual component parts of the package, and the package, exclusive of the container, consists of nonfood products whose retail selling price would exceed 10 percent of the retail selling price for the entire package, the tax may be measured by the retail selling price of the entire package.

If the retail value of the nonfood products is 10 percent or less, exclusive of the container, and the retail value of the container is 50 percent or less of the retail value of the entire package, the selling price of the entire package is not subject to tax.

Staff believes its proposed amendments balance the statutory and constitutional provisions regarding exempt sales of food products with the various needs of the retail industry. The proposal would allow retailers who purchase prepackaged combination packages of food and nonfood products as a single-priced item from their distributor or manufacturer and who have no documentation to support the cost or markup of the individual components, to report tax measured by the retail selling price of the entire package when more than 10 percent of the retail value represents the value of the nonfood products.

On the other hand, those retailers who have documentation that enables them to establish the cost and retail selling price of the individual components of the combination package must continue to segregate the retail value of the food and nonfood products, with the tax measured by the retail selling price of such nonfood products. Such segregation avoids having retailers that sell combinations of food and nonfood products (e.g., a theater selling a candy bar and soda) for a single

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price report tax on the entire sales price, when the retailer knows the retail selling price of each individual item in the combination package. Typically, these retailers purchase and sell food and nonfood products separately, and create their own combination packages by offering sales of these products for one price to their customers. Therefore, the cost and retail selling value of each product is known to the retailer and the use of segregated pricing can be maintained.

The proposed amendments would result in the taxation of transactions involving sales of food products when the retail value of the nonfood products of the combination package exceeds 10 percent of the retail value of the entire package, exclusive of the container. This is permissible because all gross receipts are presumed subject to tax until the contrary is established and the burden of proving that a sale of tangible personal property is exempted or excluded from tax is generally upon the person who makes the sale. (Rev. & Tax. Code, § 6091.)

Staff believes that the proposed amendments reasonably interpret (1) Article XIII, Section 34, of the California Constitution, which specifies that “Neither the State of California nor any of its political subdivisions shall levy or collect a sales or use tax on the sale of, or the storage, use or other consumption in this State of food products for human consumption except as provided by statute as of the effective date of this section” and (2) Revenue and Taxation Code section 6359, which specifically exempts sales of food products from tax.

In that regard, California administrative agencies, like the Board, regularly adopt regulations for the effective implementation of legislation. Moreover, the legislature has delegated to the Board the duty of enforcing the Sales and Use Tax Law and the authority to prescribe and adopt rules and regulations. (Gov. Code, § 15606; Rev. & Tax. Code, §§ 7051, 7052.) This delegation is proper even though it confers some degree of discretion on the administrative body. In prescribing such rules and regulations, the Board is acting in a quasi-legislative capacity and within the scope of the Board’s expertise. The quasi-legislative actions of administrative agencies are entitled to judicial deference. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 572.) The administrative agencies exercise of discretion should not be disturbed unless it acted arbitrarily and capriciously, and without a fair or substantial reason. (*Ford Dealers Assn. v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347, 355.)

Likewise, administrative agencies, such as the Board, when adopting regulations construing the California Constitution, are traditionally accorded great weight by the courts. (*State of South Dakota v. Brown* (1978) 20 Cal.3d 765, 777; *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 246.)

Moreover, California courts have held that the provisions of the California Constitution “‘must receive a liberal, practical commonsense construction’ and be ‘construed where possible to meet changed conditions and the growing needs of the people.’” (*Los Angeles Metropolitan Transit Authority v. Public Utilities Com.* (1963) 59 Cal.2d 863, 869 [citation omitted].)

Staff believes adoption of its proposed amendments to Regulation 1602, subdivision (b), would be a permissible exercise of administrative discretion in carrying out the intent of the Legislature and the electorate in framing the constitutional provision in question. The amendments include a practical commonsense interpretation that would meet the changed conditions and the growing needs of the people, which is inclusive of retailers and their customers, and provide further guidance to the Board’s staff and taxpayers in the proper application of the sales tax.



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In addition to the proposed revisions to subdivision (b), staff recommends deleting obsolete language in subdivisions (a)(1), (a)(2), (a)(3), and (a)(4) of Regulation 1602. The text proposed for deletion is based on statutory provisions in effect between July 15, 1991, and November 30, 1992, that excluded snack foods, candy, gum, confectionery, and bottled water from the definition of food products.

**B. Pros of the Staff Recommendation**

- Clarifies the application of tax to sales of combination packages of food and nonfood products by providing a bright line test.
- Balances the statutory and constitutional provisions regarding exempt sales of food products with the various needs of the retail industry.
- Eliminates the need for some retailers to use arbitrary percentages to determine the measure of tax for sales of combination packages.
- Updates the current regulation by deleting obsolete language based on statutory provisions in effect between July 15, 1991, and November 30, 1992.

**C. Cons of the Staff Recommendation**

May result in the taxation of some transactions involving food products when the retail value of the nonfood products exceeds 10 percent of the retail value of the combination package, exclusive of the container.

**D. Statutory or Regulatory Change**

No statutory change is required. However, staff's recommendation does require an amendment to Regulation 1602.

**E. Administrative Impact**

Staff will be required to notify taxpayers of the amendments to Regulation 1602 through an article in the Tax Information Bulletin (TIB). Appropriate revisions must be made to Publication 31, *Tax Tips for Grocery Stores*, to Publication 106, *Gift-Wrapping Charges*, to Audit Manual section 0904.20, and to various Annotations.

**F. Fiscal Impact**

**1. Cost Impact**

The workload associated with publishing the regulation and the TIB article, and updating the publications, manuals, and annotations is considered routine and any corresponding cost would be absorbed within the Board's existing budget.

**2. Revenue Impact**

The revenue gain is estimated to be \$682,000. See Revenue Estimate attached as Exhibit 1.

**G. Taxpayer/Customer Impact**

Record keeping will be easier for retailers that do not prepare their own combination packages as they will not be required to segregate the individual components of the combination packages.

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#### **H. Critical Time Frames**

None. The amended regulation will become effective 30 days after approval by the Office of Administrative Law.

### **VI. Alternative 2**

#### **A. Description of the Alternative**

Do not adopt amendments to Regulation 1602.

#### **B. Pros of the Alternative**

Does not result in the taxation of some sales of food products when the retail value of the nonfood products of the combination package exceeds 10 percent of the retail value of the combination package, exclusive of the container.

#### **C. Cons of the Alternative**

Does not address the concerns expressed by members of the CRA and CGA regarding the problems encountered in reporting the tax on sales of combination packages.

#### **D. Statutory or Regulatory Change**

None.

#### **E. Administrative Impact**

None

#### **F. Fiscal Impact**

##### **1. Cost Impact**

None

##### **2. Revenue Impact**

None. See Revenue Estimate attached as Exhibit 1.

#### **G. Taxpayer/Customer Impact**

Record keeping requirements will not change and the difficulties encountered by members of the CRA and CGA in reporting the tax on sales of combination packages will not be addressed.

#### **H. Critical Time Frames**

None

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: March 29, 2006



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## **PROPOSED REVISIONS TO REGULATION 1602, FOOD PRODUCTS, REGARDING THE APPLICATION OF TAX TO SALES OF COMBINATION PACKAGES OF FOOD AND NONFOOD PRODUCTS**

### **Alternative 1 - Staff Recommendation**

As agreed upon by staff, the California Retailers Association (CRA), the California Grocers Association (CGA), and the National Association of Theatre Owners of California/Nevada (NATO), staff proposes amending Regulation 1602, subdivision (b), *Sales of Combination Packages*, as follows:

- If the retailer has documentation to establish the cost of the individual component parts of the combination package and the retail value of the nonfood products exceeds 10 percent of the selling price of the entire package, exclusive of the container, the retailer must continue to segregate the selling price of the food and nonfood products. The measure of tax consists of the retail selling price of the nonfood products.
- If the retailer does not have documentation to establish the cost of the individual component parts of the combination package and the retail value of the nonfood products exceeds 10 percent of the selling price of the entire package, exclusive of the container, the tax may be measured by the retail selling price of the entire package.
- If the retail value of the nonfood products is 10 percent or less, exclusive of the container, and the retail value of the container is 50 percent or less of the retail value of the entire package, the selling price of the entire package is not subject to tax.

In addition, staff proposes deleting obsolete language in subdivisions (a)(1), (a)(2), (a)(3), and (a)(4) of Regulation 1602.

### **Other Alternative Considered**

Alternative 2: Do not adopt amendments to Regulation 1602.

## Revenue Estimate

**Background, Methodology, and Assumptions****Alternative 1 - Staff Recommendation**

Staff's recommendation would result in the taxation of transactions involving sales of food products when the retail value of the nonfood products of the combination package exceeds 10 percent of the retail value of the entire package, exclusive of the container.

We gathered sales data on combination packages from the CRA and two of its member companies and from the CGA. Based on the information they provided we estimate that combination packages make up approximately 0.030% of the annual taxable sales for General Merchandise Stores. For Food Stores, combination packages make up about 0.014% of annual taxable sales. In 2004, taxable sales for General Merchandise Stores amounted to \$47.9 billion and Food Store Group taxable sales amounted to \$19.8 billion. We estimate that the value of combination packages sold in General Merchandise Stores amounted to \$14.4 million annually (0.030% x \$47,900 million) and the estimated value of combinations sold in Food Stores amounted to \$2.8 million (.014% x 19,800 million).

Industry representatives could not provide us with a breakout of the value of nonfood items and food items in their combination packages. However, we assume that the value of the nonfood items and food items are each 50% of the total retail value, and that sales tax is being remitted based on a taxable measure derived from this amount. Based on this assumption and the information from above, we estimate that the revenue impact of the proposed change to Regulation 1602 is as follows:

Description	Retail Value of Combination Packages (in thousands)
General Merchandise Stores	\$ 14,400
Food Store Group	2,800
Total Combination Packages	17,200
Less: Estimated value of taxable non-food items (50%)	(8,600)
Estimated Value of Food Items	\$ 8,600
Estimated State and Local Revenue Gain (7.93%)	<u>\$ 682</u>

**Alternative 2**

Do not adopt amendments to Regulation 1602.

**Revenue Estimate****Revenue Summary**

Alternative 1 - The revenue impact of the staff recommendation is as follows:

	Revenue Gain (in thousands)
State (5.25%)	\$ 452
Local (2.00%)	172
District (.068%)	58
Total	<u>\$ 682</u>

Alternative 2 – The alternative does not have a revenue impact.

**Preparation**

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Mr. Dave Hayes, Manager, Research and Statistics Section, Legislative and Research Division, and Mr. Jeff McGuire, Tax Policy Manager, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at (916) 445 0840.

Current as of March 29, 2006

cc: Mr. Jeff McGuire

## **Regulation 1602. FOOD PRODUCTS**

*Reference:* Sections 6353 and 6359, Revenue and Taxation Code; California Constitution, Article XIII, Section 34.

**(a) IN GENERAL.** Tax does not apply to sales of food products for human consumption except as provided in Regulations 1503, 1574, and 1603. (Grocers, in particular, should note that tax applies to sales of "hot prepared food products" as provided in Regulation 1603(e).)

(1) "Food products" include cereal and cereal products, including malt and malt extracts, milk and milk products, including ice cream, ice milk and ice cream and ice milk novelties, sherberts, imitation ice cream and imitation ice milk, dried milk products, sugar of milk, milk shakes, malted milks, and any other similar type beverages composed at least in part of milk or a milk product and requiring the use of milk or a milk product in their preparation, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, including dehydrated vegetables, fruit and fruit products, spices and salt, coffee and coffee substitutes, tea, cocoa and cocoa products, sugar and sugar products, baby foods, bakery products, marshmallows, baking powder, baking soda, cream of tartar, coconut, flavoring extracts, flour, gelatin, jelly, powders, mustard, nuts, peanut butter, sauces, soups, syrups (for use as an ingredient of, or upon, food products as defined herein), yeast cakes, olive oil, bouillon cubes, meat extracts, popcorn, honey, jams, jellies, certo, mayonnaise, and flavored ice products, including popsicles and snow cones. "Food products" include candy, confectionery, and chewing gum and snack foods, except as provided in subdivisions (a)(3) and (a)(4) below.

(2) "Food products" include all fruit juices, vegetable juices, and other beverages, whether liquid or frozen, including all beverages composed in part of fruit or vegetable juice and concentrates, powders, or other bases for such beverages, and noncarbonated and noneffervescent bottled water intended for human consumption regardless of the method of delivery. "Food products" does not include carbonated or effervescent bottled waters, spirituous, malt or vinous liquors, or carbonated beverages.

~~For the period July 15, 1991 through November 30, 1992, "food products" does not include noncarbonated and noneffervescent bottled water. Sales of purified drinking water through vending machines or outlets in retail stores where the water enters the machine or outlet through local supply lines and is dispensed into the customer's own containers are exempt under Revenue and Taxation Code section 6353.~~

Tax does not apply to sales of water in bulk quantities of 50 gallons or more to an individual for use in a residence when that residence is not serviced by lines, mains or pipes.

~~(3) For the period July 15, 1991 through November 30, 1992, "food products" do not include nonmedicated chewing gum and breath mints.~~

(4) (3) "Food products" do not include medicines, cough drops, mineral oils, cigarettes, cigars, tobacco, coloring extract, ice, and dog, cat, bird and other animal foods, ~~and for the period July 15, 1991 through November 30, 1992, candy, confectionery, and snack foods.~~

~~(A) Snack Foods. For purposes of this section, "snack foods" means cookies, crackers (excluding soda, graham and arrowroot crackers), potato, corn, rice or tortilla chips, snack cakes or pies, pretzels, granola snacks, popped popcorn, fabricated chips and snacks.~~

~~1. "Snack foods" does not include doughnuts, breads, pastry and other bakery products (other than cookies, crackers, snack cakes and pies).~~

~~2. "Snack foods" does not include nuts or nut meats, seeds, or dried fruit snacks.~~

~~3. "Snack foods" does not include beef jerky and similar dried meat products, natural pork skins, hot dogs, franks, wieners, sausages, canned meat products, or sandwich meats whether sliced or unsliced.~~

~~4. "Soda crackers" are a thin, crisp saltine wafer or biscuit made with flour, yeast, water, shortening, salt, and soda. The term does not include such bakery items, which are chemically leavened or contain one or more flavoring agents, for example, honey, sugar, or molasses. The term also does not include panned butter, malt, milk, fat sprayed, cheese, and pilot bread crackers.~~

~~(B) "Snack foods" means items which are sold in a condition suitable for immediate consumption without further processing such as cooking, heating, or thawing.~~

~~1. "Fabricated snacks" means snacks made from components, including food components, which are processed and formed. "Fabricated snacks" includes, but is not limited to, such items as grain cakes, shoestring potato snacks, food bars or squares, and extruded snacks. The term does not include "meal replacement bars" which supply, per serving (as defined by the manufacturer), at least 250 calories and 25% of the U.S. RDA of vitamins and minerals (as established by regulations of the United States Food and Drug Administration).~~

~~2. "Extruded snacks" includes, but is not limited to, curls, puffs, twists, balls, filled snacks, and pellet-based snacks.~~

~~(C) "Snack cakes or pies" means cakes or pies which are baked or fried in individual serving sizes or cut and pre-wrapped or pre-packaged for subsequent sale in individual serving sizes, whether sold individually or packaged together. A package of single serving items is subject to tax. The term does not include whole cakes or pies nor does it include a slice of pie or cake, which is not pre-wrapped or pre-packaged at the time of sale.~~

~~(D) "Granola snacks" means granola bars and squares but does not include granola sold in bulk, cereals, and trail mixes.~~

~~(E) Candy and Confectionery. For the period July 15, 1991 through November 30, 1992, tax applies to sales of candy and confectionery, which includes chocolate coated nuts, candied fruits, crystallized fruits and glace fruits.~~

~~(5) (4) "Food products" do not include any product for human consumption in liquid, powdered, granular, tablet, capsule, lozenge, or pill form (A) which is described on its package or label as a food supplement, food adjunct, dietary supplement, or dietary adjunct, and to any such product (B) which is prescribed or designed to remedy specific dietary deficiencies or to increase or decrease generally one or more of the following areas of human nutrition:~~

- ~~1. Vitamins~~
- ~~2. Proteins~~
- ~~3. Minerals~~
- ~~4. Caloric intake~~

In determining whether a product falls within category (B), it is important whether the manufacturer has specially mixed or compounded ingredients for the purpose of providing a high nutritional source. For example, protein supplements and vitamin pills are taxable as food supplements.

Other items, such as cod liver oil, halibut liver oil, and wheat germ oil, are considered dietary supplements and thus subject to tax even though not specially compounded. However, unusual foods such as brewer's yeast, wheat germ and seaweed are not subject to tax except when their label states they are a food supplement or the equivalent. Finally, the compounding of nutritional elements in items traditionally accepted as food does not make them taxable, e.g., vitamin-enriched milk and high protein flour.

Tax, however, does not apply to any such products which either are exempted by Revenue and Taxation Code section 6369, respecting prescription medicines, or are complete dietary foods providing the user in the recommended daily dosage with substantial amounts of vitamins, proteins, minerals and foods providing adequate caloric intake. An example of the latter is a food daily providing the user with the following:

1. 70 grams of high quality protein
2. 900 calories

3. Minimum daily requirements as established by the regulations of the Federal Food and Drug Administration of the following vitamins: A, B1, C, D, Riboflavin, and Niacin or Niacinamide; and the following minerals: Calcium, Phosphorus, Iron and Iodine.

**(b) SALES OF COMBINATION PACKAGES.** When a package contains both food products (e.g., dried fruit) and nonfood products (e.g., wine, or toys), the application of tax depends upon the essential character of the complete

package. If more than 10 percent of the retail value of the complete package, exclusive of the container, represents the value of the nonfood ~~merchandise products~~, a segregation must be made and if the retailer has documentation that would establish the cost of the individual component parts of the package, with the tax measured by the retail selling price of such nonfood merchandise products.

When the retailer does not have documentation that would establish the cost of the individual component parts of the package, and the package, exclusive of the container, consists of nonfood products whose retail selling price would exceed 10 percent of the retail selling price for the entire package, the tax may be measured by the retail selling price of the entire package.

If the retail value of the nonfood products is 10 percent or less, exclusive of the container, and the retail value of the container is 50 percent or less of the retail value of the entire package, the selling price of the entire package is not subject to tax.

**(c) SALES OF NON-EDIBLE DECORATIONS.** When the sale of a cake or other bakery good for a single price includes non-edible decorations, the application of tax depends upon the value of the non-edible merchandise versus the value of the cake or bakery good. If more than 50 percent of the total retail value of the cake or bakery good represents the value of non-edible decorations, a segregation must be made and the tax measured by the retail selling price of such non-edible decorations. If the price of the non-edible decoration is separately stated, then tax applies to such charge.

**(d) FOOD PRODUCTS PROCESSED BY THE CONSUMER.** A commodity included in the term "food products" under Revenue and Taxation Code section 6359 may be sold to a consumer to be processed and incorporated into a product which is for human consumption but which is excluded from the term "food products." For example, grapes may be sold to be used in making wine for consumption and not for resale. If the commodity sold to the consumer is included in the term "food products" and if the product into which it is incorporated is for human consumption, the sale of the commodity is within the exemption provided by this section.